

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRAN DESHAWN PATILLO,

Defendant-Appellant.

UNPUBLISHED

October 28, 2010

No. 293524

Wayne Circuit Court

LC No. 08-017947-FC

Before: MURPHY, C.J., and BECKERING and M.J. KELLY, JJ.

PER CURIAM.

A jury convicted defendant of assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to four to ten years' imprisonment for the assault conviction and a consecutive two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right. We vacate defendant's sentence for assault with intent to do great bodily harm and remand for resentencing on that offense. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's convictions arise out of a July 18, 2008, shooting. As the victim was backing out her driveway in a car, defendant approached the car and fired multiple rounds at her, striking her in the chest, abdomen, and arm.

Assault with intent to do great bodily harm is a class D offense subject to the legislative guidelines. MCL 777.16d. Under the guidelines as originally scored, defendant received a total of 20 prior record variable (PRV) points and 55 offense variable (OV) points, placing him in the C-V cell of the applicable sentencing grid, for which the sentencing guidelines range is 19 to 38 months. See MCL 777.65. At sentencing, the parties discussed the scoring of the guidelines and certain changes were made. Specifically, defendant's score for PRV 5 was increased from ten to 15 points and defendant's score for OV 4 was increased from zero to ten points. Although the scoring change to OV 4 did not affect defendant's OV level placement (level V encompasses scores of 50 to 74 points), the scoring change to PRV 5 did affect defendant's PRV level, changing it from level C (10 to 24 points) to level D (25 to 49 points). See *id.* The guidelines range for a defendant in the D-V cell is 29 to 57 months. *Id.* However, the parties erroneously advised the trial court that the scoring changes did not affect the appropriate guidelines range, which they believed remained at 19 to 38 months. The trial court elected to depart from that range, finding that the guidelines did not adequately account for the brutal nature of the offense

or the psychological impact on the victim's family and imposed a minimum sentence of 48 months.

Defendant now argues that the trial court erred in departing from the guidelines range for reasons that were not substantial and compelling and by failing to justify why the sentence it imposed was more proportionate than a sentence within the guidelines range. We conclude that resentencing is required because the trial court utilized the wrong guidelines range when sentencing defendant. Although the trial court believed that it was exceeding the guidelines range, it actually sentenced defendant within the range applicable to the scoring adjustments that were made at sentencing. Nonetheless, "[a] sentence is invalid when a sentencing court relies on an inappropriate guidelines range." *People v McGraw*, 484 Mich 120, 131; 771 NW2d 655 (2009). Therefore, we vacate defendant's sentence for assault with intent to do great bodily harm and remand for resentencing on that offense.

Vacated in part and remanded for resentencing. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Jane M. Beckering
/s/ Michael J. Kelly